

**Introduced by Senator Figueroa**

February 24, 1999

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An act to add Sections 516, 517, and 517.5 to, the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 663, as introduced, Figueroa. Crimes: vehicle sales.

Existing law generally regulates the sale, lease, and registration of vehicles.

This bill would provide that persons, as defined, acquiring a vehicle that is subject to a security interest or lease agreement, pay to the secured party or lienholder the amount due, or pay to the lessor, the amount due to terminate the lease, as specified. This bill would provide that failure to do so is an offense punishable as a misdemeanor or a felony.

This bill would also provide that any dealer or lessor-retailer who willfully fails to submit to the Department of Motor Vehicles, materials and fees in connection with registration, as specified, is guilty of an offense. The offense would be punishable as a misdemeanor or a felony.

This bill would also provide that any dealer who enters into a consignment agreement and fails to pay the amount due, as specified, is guilty of an offense. The offense would be punishable as a misdemeanor or a felony.

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated

by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares as  
2 follows:

3 (a) Severe hardships on consumers and commercial  
4 lending institutions result when dealers, in the selling or  
5 leasing of vehicles, accept trade-in vehicles or otherwise  
6 acquire vehicles that are subject to preexisting security or  
7 lease agreements, when both the seller and the dealer  
8 understand that the acquiring dealer has agreed to satisfy  
9 any lien or terminate such lease agreement, and then the  
10 acquiring dealer fails to pay off the balance due under the  
11 existing security or lease agreement. The Legislature  
12 further finds and declares that it is in the best interests of  
13 consumers and business interests alike to require vehicle  
14 dealers to pay the outstanding balance under any security  
15 interest, or the amount due under a lease agreement,  
16 relating to the acquired vehicle, in a timely fashion after  
17 acquisition of the vehicle.

18 (b) Severe hardships on consumers result when  
19 dealers, in the selling or leasing of vehicles, collect from  
20 consumers the amount due to the Department of Motor  
21 Vehicles for registration of vehicles, and then fail to  
22 forward that sum to the department, with the result that  
23 the consumer discovers that he or she cannot lawfully  
24 drive the vehicle until the department receives the  
25 money due for registration. In such a situation, the  
26 consumer is forced to pay directly to the department the  
27 amount which he or she already paid to the dealer for that  
28 registration, and thereby ends up paying twice for the  
29 same governmental service due solely to the misconduct  
30 of the selling or leasing dealer.

(c) Severe hardships on consumers and dealers result when dealers who obtain possession of vehicles pursuant to consignment agreements sell those vehicles to a purchaser and fail to pay to the consignor the amount due pursuant to the consignment contract.

SEC. 2. Section 516 is added to the Penal Code, to read:

516. (a) Any person who acquires, by purchase, trade-in, or otherwise, any vehicle that, at the time of acquisition, is subject to any security interest or lease agreement, shall, within 20 days of the acquisition of the vehicle, or within 45 days of the acquisition of the vehicle if it has an out-of-state title, pay to the secured party or lienholder the outstanding balance of the note or other security instrument that is the basis for the security interest in the vehicle, or pay to the lessor the amount due to terminate the lease agreement, whichever is applicable.

(b) Any person who willfully fails to pay the outstanding balance of any security instrument, or who willfully fails to pay to the lessor the amount due to terminate the lease agreement, as required by subdivision (a), is guilty of a public offense punishable as follows:

(1) If the amount of the outstanding balance of the security instrument or amount due under the lease agreement exceeds four hundred dollars (\$400), the offense, upon conviction, is punishable as specified in either subparagraph (A) or (B):

(A) By imprisonment in a county jail not to exceed one year or by a fine of not more than ten thousand dollars (\$10,000), or by both that imprisonment and fine.

(B) By imprisonment in the state prison for 16 months, or two or three years, or by a fine of not more than ten thousand dollars (\$10,000), or by both that imprisonment and fine.

(2) In all other cases, the offense is punishable by imprisonment in a county jail not to exceed six months, or by a fine of not more than ten thousand dollars (\$10,000), or by both that imprisonment and fine.

1 (c) For purposes of this section, the consignee of a  
2 vehicle under a consignment arrangement, wherein the  
3 consignor is not a licensed dealer, manufacturer, or  
4 distributor, is not deemed to have acquired the vehicle,  
5 until the vehicle is sold, as defined in Section 11730 of the  
6 Vehicle Code, provided that (1) the consignee is a  
7 licensed dealer, and (2) the consignment agreement  
8 meets all the requirements of law, including the  
9 provisions of Sections 11729 and 11730 of the Vehicle  
10 Code.

11 (d) For purposes of this section, “person” means:

12 (1) All persons defined by Section 285 of the Vehicle  
13 Code, whether licensed or not.

14 (2) When the person who acquired the vehicle and  
15 failed to fulfill the requirements of subdivision (a) is a  
16 dealer licensed as a partnership, every partner and  
17 employee who either (A) directly participated in the  
18 activity, (B) authorized another partnership agent to so  
19 participate, or (C) was in a position to control the  
20 activities of the partnership agents who failed to fulfill the  
21 requirements of subdivision (a) and knowingly failed to  
22 prevent such activity.

23 (3) When the person who acquired the vehicle and  
24 failed to fulfill the requirements of subdivision (a) is a  
25 dealer licensed as a corporation, every director, officer,  
26 and employee who either (A) directly participated in the  
27 activity, (B) authorized another corporate agent to so  
28 participate, or (C) was in a position to control the  
29 activities of the corporate agents who failed to fulfill the  
30 requirements of subdivision (a) and knowingly failed to  
31 prevent such activity.

32 (e) For purposes of this section, the term “security  
33 interest” does not include any flooring arrangement  
34 whereby a dealer acquires vehicles from a manufacturer  
35 or distributor, to be placed in the dealer’s inventory for  
36 the purposes of resale.

37 SEC. 3. Section 517 is added to the Penal Code, to  
38 read:

39 517. (a) Any dealer or lessor-retailer who willfully  
40 fails to submit to the Department of Motor Vehicles an

1 application accompanied by all fees and penalties due for  
2 registration or transfer of registration of any vehicle sold  
3 by the dealer or leased by the lessor-retailer within 20  
4 days of the date of the sale or lease, or within 40 days of  
5 the date of the sale or lease if the vehicle is subject to any  
6 electronic lien recording program established by the  
7 department, is guilty of a public offense, punishable as  
8 follows:

9 (1) If the amount of the fee or penalty due for  
10 registration or transfer of registration exceeds four  
11 hundred dollars (\$400), the offense, upon conviction, is  
12 punishable as specified in either subparagraph (A) or  
13 (B).

14 (A) By imprisonment in a county jail not to exceed one  
15 year, or by a fine of not more than ten thousand dollars  
16 (\$10,000), or by both that fine and imprisonment.

17 (B) By imprisonment in the state prison for 16 months,  
18 or two or three years, or by a fine of not more than ten  
19 thousand dollars (\$10,000), or by both that imprisonment  
20 and fine.

21 (2) In all other cases, the offense is punishable by  
22 imprisonment in a county jail not to exceed six months,  
23 or by a fine of not more than ten thousand dollars  
24 (\$10,000), or by both that fine and imprisonment.

25 (b) For the purposes of this subdivision, the term  
26 “dealer” or “lessor-retailer” has the same definition as the  
27 term “person” under Section 515.

28 SEC. 4. Section 517.5 is added to the Penal Code, to  
29 read:

30 517.5. (a) Any dealer who enters into a  
31 “consignment” arrangement, as that term is defined in  
32 Section 266 of the Vehicle Code, and who sells or leases  
33 the consigned vehicle, and fails to pay the amount due to  
34 the consignor within 20 days after the sale or lease of the  
35 vehicle, is guilty of a public offense, punishable as follows:

36 (1) If the amount due exceeds four hundred dollars  
37 (\$400), the offense, upon conviction, is punishable as  
38 specified in either subparagraph (A) or (B):

1 (A) By imprisonment in a county jail not to exceed one  
2 year, or by a fine of not more than ten thousand dollars  
3 (\$10,000), or by both that fine and imprisonment.

4 (B) By imprisonment in the state prison for 16 months,  
5 or two or three years, or by a fine of not more than ten  
6 thousand dollars (\$10,000), or by both that imprisonment  
7 and fine.

8 (2) In all other cases, the offense is punishable by  
9 imprisonment in a county jail not to exceed six months,  
10 or by a fine of not more than ten thousand dollars  
11 (\$10,000), or by both that fine and imprisonment.

12 (b) For the purposes of this subdivision, the term  
13 “sale” shall have the same meaning as that term is used  
14 in Section 11729 and defined in Section 11730 of the  
15 Vehicle Code.

16 (c) The penalties under this section are in addition to  
17 any other remedies or penalties provided by law for the  
18 conduct proscribed by this chapter. If any provision of  
19 this section or the application thereof to any person or  
20 circumstance is held to be unconstitutional, the  
21 remainder of the section and the application of its  
22 provisions to other persons and circumstances shall not be  
23 affected thereby.

24 SEC. 5. No reimbursement is required by this act  
25 pursuant to Section 6 of Article XIII B of the California  
26 Constitution because the only costs that may be incurred  
27 by a local agency or school district will be incurred  
28 because this act creates a new crime or infraction,  
29 eliminates a crime or infraction, or changes the penalty  
30 for a crime or infraction, within the meaning of Section  
31 17556 of the Government Code, or changes the definition  
32 of a crime within the meaning of Section 6 of Article  
33 XIII B of the California Constitution.

